

## SENATE BILL No. 68

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-18-2.

**Synopsis:** Uniform Voidable Transactions Act. Enacts the Uniform Voidable Transactions Act, governing the ability of a creditor to nullify certain transfers made by a debtor.

**Effective:** July 1, 2016.

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**Bray**

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January 5, 2016, read first time and referred to Committee on Insurance & Financial Institutions.

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PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE BILL No. 68

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-18-2-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) ~~As used in this~~  
3 ~~chapter, "asset" means property of a debtor.~~

4 (b) ~~The term does not include any of the following:~~

5 (1) ~~Property, to the extent the property is encumbered by a valid~~  
6 ~~lien.~~

7 (2) ~~Property, to the extent the property is generally exempt under~~  
8 ~~law other than federal bankruptcy law.~~

9 (3) ~~An interest in property held in tenancy by the entireties to the~~  
10 ~~extent the interest is not subject to process by a creditor holding~~  
11 ~~a claim against only one (1) tenant.~~

12 The following definitions apply throughout this chapter:

13 (1) "Affiliate" means:

14 (A) a person that directly or indirectly owns, controls, or  
15 holds with power to vote, twenty percent (20%) or more of  
16 the outstanding voting securities of the debtor, other than  
17 a person that holds the securities:



(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(B) a corporation, twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(A) property to the extent that it is encumbered by a valid lien;

(B) property to the extent that it is generally exempt under nonbankruptcy law, including property exempt from execution under IC 34-55-10; or

(C) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one (1) tenant.

(3) "Claim", except as used in "claim for relief", means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person that has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person that is liable on a claim.

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.



**(8) "Insider" includes:**

**(A) if the debtor is an individual:**

- (i) a relative of the debtor or of a general partner of the debtor;**
- (ii) a partnership in which the debtor is a general partner;**
- (iii) a general partner in a partnership described in item (ii); or**
- (iv) a corporation of which the debtor is a director, officer, or person in control;**

**(B) if the debtor is a corporation:**

- (i) a director of the debtor;**
- (ii) an officer of the debtor;**
- (iii) a person in control of the debtor;**
- (iv) a partnership in which the debtor is a general partner;**
- (v) a general partner in a partnership described in item (iv); or**
- (vi) a relative of a general partner, director, officer, or person in control of the debtor;**

**(C) if the debtor is a partnership:**

- (i) a general partner in the debtor;**
- (ii) a relative of a general partner in, a general partner of, or a person in control of, the debtor;**
- (iii) another partnership in which the debtor is a general partner;**
- (iv) a general partner in a partnership described in item (iii);**
- (v) a person in control of the debtor; or**
- (vi) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and**

**(D) a managing agent of the debtor.**

**(9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien, or a statutory lien.**

**(10) "Organization" means a person other than an individual.**

**(11) "Person" means an individual, an estate, a partnership, a business or nonprofit entity, a public corporation, a government or governmental subdivision, agency, or instrumentality, or another legal entity.**



(12) "Property" means anything that may be the subject of ownership.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or another medium and is retrievable in perceivable form.

(14) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(15) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(16) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or another encumbrance.

(17) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

SECTION 2. IC 32-18-2-3 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 3: As used in this chapter, "claim" means a right to payment, whether the right is:

(1) reduced to judgment or not;

(2) liquidated or unliquidated;

(3) fixed or contingent;

(4) matured or unmatured;

(5) disputed or undisputed;

(6) legal or not;

(7) equitable or not; or

(8) secured or unsecured.

SECTION 3. IC 32-18-2-4 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 4: As used in this chapter, "creditor" means a person who has a claim.

SECTION 4. IC 32-18-2-5 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 5: As used in this chapter, "debt" means liability on a claim.

SECTION 5. IC 32-18-2-6 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 6: As used in this chapter, "debtor" means a person who is liable on a claim.



1 SECTION 6. IC 32-18-2-7 IS REPEALED [EFFECTIVE JULY 1,  
2 2016]. Sec. 7: (a) As used in this chapter, "lien" means a charge against  
3 or an interest in property to secure payment of a debt or performance  
4 of an obligation.

5 (b) The term includes any of the following:

6 (1) A security interest created by agreement.

7 (2) A judicial lien obtained by legal or equitable process or  
8 proceedings.

9 (3) A common law lien.

10 (4) A statutory lien.

11 SECTION 7. IC 32-18-2-8 IS REPEALED [EFFECTIVE JULY 1,  
12 2016]. Sec. 8: As used in this chapter, "person" means an individual;  
13 a partnership; a corporation; a limited liability company; an association;  
14 an organization; a government; a governmental subdivision or agency;  
15 a business trust; an estate; a trust; or any other legal or commercial  
16 entity.

17 SECTION 8. IC 32-18-2-9 IS REPEALED [EFFECTIVE JULY 1,  
18 2016]. Sec. 9: As used in this chapter, "property" means anything that  
19 can be the subject of ownership.

20 SECTION 9. IC 32-18-2-10 IS REPEALED [EFFECTIVE JULY 1,  
21 2016]. Sec. 10: (a) As used in this chapter, "transfer" means any mode  
22 of disposing of or parting with an asset or an interest in an asset,  
23 whether the mode is direct or indirect, absolute or conditional, or  
24 voluntary or involuntary.

25 (b) The term includes payment of money; release; lease; and  
26 creation of a lien or other encumbrance.

27 SECTION 10. IC 32-18-2-11 IS REPEALED [EFFECTIVE JULY  
28 1, 2016]. Sec. 11: As used in this chapter, "valid lien" means a lien that  
29 is effective against the holder of a judicial lien subsequently obtained  
30 by legal or equitable process or proceedings.

31 SECTION 11. IC 32-18-2-12 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. (a) For purposes of  
33 this section, assets do not include property that has been:

34 (1) transferred, concealed, or removed with intent to hinder,  
35 delay, or defraud creditors; or

36 (2) transferred in a manner making the transfer voidable under  
37 this chapter.

38 (b) For purposes of this section, debts do not include an obligation  
39 to the extent it is secured by a valid lien on property of the debtor not  
40 included as an asset under this section.

41 (c) A debtor is insolvent if, **at a fair valuation**, the sum of the  
42 debtor's debts is greater than **all the sum** of the debtor's assets. **at a fair**



1 ~~valuation:~~

2 (d) A debtor ~~who~~ **that** is generally not paying the debtor's debts as  
 3 they become due, **other than as a result of a bona fide dispute**, is  
 4 presumed to be insolvent. This presumption imposes upon the party  
 5 against ~~whom~~ **which** the presumption is directed the burden of proving  
 6 that the nonexistence of insolvency is more probable than its existence.

7 (e) A partnership is insolvent if the sum of the partnership's debts is  
 8 greater than the aggregate, at a fair valuation, of all of the partnership's  
 9 assets and the sum of the excess of the value of each general partner's  
 10 nonpartnership assets over each general partner's nonpartnership debts.

11 SECTION 12. IC 32-18-2-14 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 14. **(a)** A transfer made  
 13 or an obligation incurred by a debtor is ~~fraudulent~~ **voidable** as to a  
 14 creditor, whether the creditor's claim arose before or after the transfer  
 15 was made or the obligation was incurred, if the debtor made the  
 16 transfer or incurred the obligation:

17 (1) with actual intent to hinder, delay, or defraud any creditor of  
 18 the debtor; or

19 (2) without receiving a reasonably equivalent value in exchange  
 20 for the transfer or obligation, and the debtor:

21 (A) was engaged or was about to engage in a business or a  
 22 transaction for which the remaining assets of the debtor were  
 23 unreasonably small in relation to the business or transaction;  
 24 or

25 (B) intended to incur or believed or reasonably should have  
 26 believed that the debtor would incur debts beyond the debtor's  
 27 ability to pay as the debts became due.

28 **(b) In determining actual intent under subsection (a)(1),**  
 29 **consideration may be given, among other factors, to whether:**

30 **(1) the transfer or obligation was to an insider;**

31 **(2) the debtor retained possession or control of the property**  
 32 **transferred after the transfer;**

33 **(3) the transfer or obligation was disclosed or concealed;**

34 **(4) before the transfer was made or the obligation was**  
 35 **incurred, the debtor had been sued or threatened with suit;**

36 **(5) the transfer was of substantially all the debtor's assets;**

37 **(6) the debtor absconded;**

38 **(7) the debtor removed or concealed assets;**

39 **(8) the value of the consideration received by the debtor was**  
 40 **reasonably equivalent to the value of the asset transferred or**  
 41 **the amount of the obligation incurred;**

42 **(9) the debtor was insolvent or became insolvent shortly after**



1       the transfer was made or the obligation was incurred;

2       (10) the transfer occurred shortly before or shortly after a  
3       substantial debt was incurred; and

4       (11) the debtor transferred the essential assets of the business  
5       to a lienor that transferred the assets to an insider of the  
6       debtor.

7       (c) A creditor making a claim for relief under this section has  
8       the burden of proving the elements of the claim for relief by a  
9       preponderance of the evidence.

10       SECTION 13. IC 32-18-2-15 IS AMENDED TO READ AS  
11       FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 15. (a) A transfer made  
12       or an obligation incurred by a debtor is ~~fraudulent~~ **voidable** as to a  
13       creditor whose claim arose before the transfer was made or the  
14       obligation was incurred if:

15       (1) the debtor made the transfer or incurred the obligation without  
16       receiving a reasonably equivalent value in exchange for the  
17       transfer or obligation; and

18       (2) the debtor:

19           (A) was insolvent at that time; or

20           (B) became insolvent as a result of the transfer or obligation.

21       (b) A transfer made by a debtor is voidable as to a creditor  
22       whose claim arose before the transfer was made if the transfer was  
23       made to an insider for an antecedent debt, the debtor was insolvent  
24       at that time, and the insider had reasonable cause to believe that  
25       the debtor was insolvent.

26       (c) Subject to section 12(d) of this chapter, a creditor making a  
27       claim for relief under this section has the burden of proving the  
28       elements of the claim for relief by a preponderance of the evidence.

29       SECTION 14. IC 32-18-2-16 IS AMENDED TO READ AS  
30       FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 16. The following  
31       apply for purposes of this chapter:

32       (1) A transfer is made:

33           (A) with respect to an asset that is real property other than a  
34           fixture (but including the interest of a seller or purchaser under  
35           a contract for the sale of the asset), when the transfer is so far  
36           perfected that a good faith purchaser of the asset from the  
37           debtor against whom applicable law permits the transfer to be  
38           perfected cannot acquire an interest in the asset that is superior  
39           to the interest of the transferee; and

40           (B) with respect to an asset that is not real property or that is  
41           a fixture, when the transfer is so far perfected that a creditor on  
42           a simple contract cannot acquire a judicial lien (other than





- 1 under this chapter) that is superior to the interest of the  
 2 transferee.
- 3 (2) If applicable law permits a transfer to be perfected under  
 4 subdivision (1) and the transfer is not so perfected before the  
 5 commencement of an action for relief under this chapter, the  
 6 transfer is considered made immediately before the  
 7 commencement of the action.
- 8 (3) If applicable law does not permit a transfer to be perfected  
 9 under subdivision (1), the transfer is made when it becomes  
 10 effective between the debtor and the transferee.
- 11 (4) A transfer is not made until the debtor has acquired rights in  
 12 the asset transferred.
- 13 (5) An obligation is incurred:
- 14 (A) if oral, when it becomes effective between the parties; or
- 15 (B) if evidenced by a ~~writing~~, **record**, when the ~~writing~~  
 16 **executed record signed** by the obligor is delivered to or for  
 17 the benefit of the obligee.

18 SECTION 15. IC 32-18-2-18 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 18. (a) A transfer or an  
 20 obligation is not voidable under section ~~14(1)~~ **14(a)(1)** of this chapter  
 21 against a person ~~who~~ **that** took in good faith and for a reasonably  
 22 equivalent value **given the debtor** or against any subsequent transferee  
 23 or obligee.

24 (b) **To the extent that a transfer is avoidable in an action by a**  
 25 **creditor under section 17(a)(1) of this chapter, the following rules**  
 26 **apply:**

27 (1) Except as otherwise provided in this chapter, ~~to the extent a~~  
 28 ~~transfer is voidable in an action by a creditor under section~~  
 29 ~~17(a)(1) of this chapter,~~ the creditor may recover judgment for the  
 30 value of the asset transferred, as adjusted under subsection (c), or  
 31 the amount necessary to satisfy the creditor's claim, whichever is  
 32 less. The judgment may be entered against:

33 ~~(1)~~ (A) the first transferee of the asset or the person for whose  
 34 benefit the transfer was made; or

35 ~~(2) (B) any subsequent transferee other than an immediate or~~  
 36 **mediate transferee of the first transferee, other than:**

37 (i) a good faith transferee ~~who~~ **that** took for value; or

38 (ii) ~~from any subsequent transferee.~~ **an immediate or**  
 39 **mediate good faith transferee of a person described in**  
 40 **item (i).**

41 (2) **Recovery under section 17(a)(1) or 17(a)(2) of this chapter**  
 42 **or from the asset transferred or its proceeds, by levy or**



**otherwise, is available only against a person described in subdivision (1).**

(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) a lien on or a right to retain ~~any~~ **an** interest in the asset transferred;
- (2) enforcement of ~~any~~ **an** obligation incurred; or
- (3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under section ~~14(2)~~ **14(a)(2)** or section 15 of this chapter if the transfer results from:

- (1) termination of a lease upon default by the debtor when the termination is permitted by the lease and applicable law; or
- (2) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code, **other than acceptance of collateral in full or partial satisfaction of the obligation it secures.**

**(f) A transfer is not voidable under section 15(a)(2) of this chapter:**

- (1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;**
- (2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or**
- (3) if made under a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.**

**(g) The following rules determine the burden of proving matters referred to in this section:**

- (1) A party that seeks to invoke subsection (a), (d), (e), or (f) has the burden of proving the applicability of that subsection.**
- (2) Except as otherwise provided in subdivisions (3) and (4), the creditor has the burden of proving each applicable element of subsection (b) or (c).**
- (3) The transferee has the burden of proving the applicability to the transferee of subsection (b)(1)(A).**
- (4) A party that seeks adjustment under subsection (c) has the burden of proving the adjustment.**



1       **(h) The standard of proof required to establish matters referred**  
 2 **to in this section is by preponderance of the evidence.**

3       SECTION 16. IC 32-18-2-19 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 19. A ~~cause of action~~  
 5 **claim for relief** with respect to a ~~fraudulent~~ transfer or obligation  
 6 under this chapter is extinguished unless brought as follows:

7       (1) If brought under section ~~14(1)~~ **14(a)(1)** of this chapter, an  
 8 action is extinguished unless brought not later than the later of the  
 9 following:

10       (A) Four (4) years after the transfer was made or the obligation  
 11 was incurred.

12       (B) One (1) year after the transfer or obligation was or could  
 13 reasonably have been discovered by the claimant.

14       (2) If brought under section ~~14(2)~~ **14(a)(2)** or ~~15(1)~~ **15(a)(1)** of  
 15 this chapter, an action is extinguished unless it is brought not later  
 16 than four (4) years after the transfer was made or the obligation  
 17 was incurred.

18       SECTION 17. IC 32-18-2-19.3 IS ADDED TO THE INDIANA  
 19 CODE AS A **NEW SECTION** TO READ AS FOLLOWS  
 20 [EFFECTIVE JULY 1, 2016]: **Sec. 19.3. (a) The following rules**  
 21 **determine a debtor's location:**

22       **(1) A debtor who is an individual is located at the individual's**  
 23 **principal residence.**

24       **(2) A debtor that is an organization and has only one (1) place**  
 25 **of business is located at its place of business.**

26       **(3) A debtor that is an organization and has more than one (1)**  
 27 **place of business is located at its chief executive office.**

28       **(b) A claim for relief in the nature of a claim for relief under**  
 29 **this chapter is governed by the law of the jurisdiction in which the**  
 30 **debtor is located when the transfer is made or the obligation is**  
 31 **incurred.**

32       SECTION 18. IC 32-18-2-19.5 IS ADDED TO THE INDIANA  
 33 CODE AS A **NEW SECTION** TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2016]: **Sec. 19.5. (a) The following definitions**  
 35 **apply throughout this section:**

36       **(1) "Protected series" means an arrangement, however**  
 37 **denominated, created by a series organization that, under the**  
 38 **law under which the series organization is organized, has the**  
 39 **characteristics set forth in subdivision (2).**

40       **(2) "Series organization" means an organization that, under**  
 41 **the law under which it is organized, has the following**  
 42 **characteristics:**



1 (A) The organic record of the organization provides for  
 2 creation by the organization of one (1) or more protected  
 3 series, however denominated, with respect to specified  
 4 property of the organization, and for records to be  
 5 maintained for each protected series that identify the  
 6 property of or associated with the protected series.

7 (B) Debt incurred or existing with respect to the activities  
 8 of, or property of or associated with, a particular protected  
 9 series is enforceable against the property of or associated  
 10 with the protected series only, and not against the property  
 11 of or associated with the organization or other protected  
 12 series of the organization.

13 (C) Debt incurred or existing with respect to the activities  
 14 or property of the organization is enforceable against the  
 15 property of the organization only, and not against the  
 16 property of or associated with a protected series of the  
 17 organization.

18 (b) A series organization and each protected series of the  
 19 organization is a separate person for purposes of this chapter, even  
 20 if for other purposes a protected series is not a person separate  
 21 from the organization or other protected series of the organization.

22 SECTION 19. IC 32-18-2-22 IS ADDED TO THE INDIANA  
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 24 [EFFECTIVE JULY 1, 2016]: **Sec. 22. This chapter modifies, limits,**  
 25 **or supersedes the federal Electronic Signatures in Global and**  
 26 **National Commerce Act, 15 U.S.C. 7001 et seq., but does not**  
 27 **modify, limit, or supersede Section 101(c) of that act, 15 U.S.C.**  
 28 **7001(c), or authorize electronic delivery of any of the notices**  
 29 **described in Section 103(b) of that act, 15 U.S.C. 7003(b).**

